

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVOOD KHADEMI,  
Petitioner,  
v.  
PLACER COUNTY SHERIFF,  
Respondent.

No. 23-cv-2122 CKD P

ORDER

Petitioner is a county jail inmate, proceeding pro se and in forma pauperis, with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The parties consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1). (ECF No. 12.) On February 23, 2024, respondent's motion to dismiss was granted, this action was dismissed, and judgment was entered. (ECF Nos. 30, 31.) On May 8, 2024, the United States Court of Appeals for the Ninth Circuit remanded the action for the limited purpose of granting or denying a certificate of appealability. (ECF No. 36.)

Under Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the court has considered whether to issue a certificate of appealability. Before petitioner can appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a

1 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of  
2 appealability indicating which issues satisfy the required showing or must state the reasons why  
3 such a certificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed on  
4 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that  
5 jurists of reason would find it debatable whether the district court was correct in its procedural  
6 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid  
7 claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir.  
8 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000)). For the reasons  
9 set forth in the February 23, 2024 order, the undersigned finds that issuance of a certificate of  
10 appealability is not warranted in this case.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The request for a certificate of appealability (ECF No. 36) is denied; and
- 13 2. The Clerk of the Court shall serve a copy of this order on the United States Court of  
14 Appeals for the Ninth Circuit, Case No. 24-1738.

15 Dated: May 14, 2024

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17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE

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